REJECTION

Claims 2 and 3 are rejected pursuant to 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

Claims 1 and 2 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent 6,610,276 to Melman.

Claims 3-5 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,610,276 to Melman as applied to U.S. Patent 5,624,906 to Vermeer, and U.S. Patent 5,376,374 to Zelaya in further light of application No. 2004/0247532 to Pinol.

DISCUSSION

Reconsideration and allowance of this application is respectfully requested in view of the foregoing amendment to the claims and the following remarks.

REMARKS

Applicant has amended Claim 1 to include the recitations of Claims 3 and has cancelled Claims 2 and 3 to more clearly define Applicant's novel contribution and to facilitate an understanding thereof. It is respectfully submitted that amended Claim 1 is not indefinite under 35 U.S.C. 112, since the weight basis of the components (as defined in originally presented Claim 3) are clearly based upon an aqueous solution of such components which would be unequivocally understood by one skilled in the art and withdrawal of any such rejection is respectfully submitted.

It is respectfully submitted that amended Claim 1 is not anticipated under 35 U.S.C. 102(e) by the Melman et al. reference as proffered in the Office Action under reply since the Melman et al. reference was applied to originally presented Claims 1 and 2 but not Claim 3, the limitations of which are now included in Claim 1. Consequently, withdrawal of the rejection of anticipation under 35 U.S.C. 102(e) is respectfully requested.

It is respectfully submitted that Claim 1 and 4 to 5 are not obviated under 35 U.S.C. 103(a) by the combination of the Melman et al reference in view of the secondary references USP '906 to Veneer, USP '374 to Zelaya and in further view of USSN "532 to Pinol. The claimed mouth wash and process of use defines an aqueous solution comprised of from 10 to 20 percent by weight of vinegar; 5 to 10 percent by weight sodium carbonate and from 1 to 5 weight percent of sodium chloride; or alternately considered an aqueous mouth wash solution wherein vinegar is present in amount greater than the combined percent by weight of sodium carbonate and sodium chloride and wherein the amount of sodium carbonate is present in an amount greater than sodium chloride.

In the rejection of Claim 1 as originally presented, the Examiner proffered the anticipatory Melman et al. reference under 35 U.S.C. 102(e) exemplified by Example 8 on

Column 9 disclosing a Breath Freshner tablet commenting that in the context of a mouth wash, such teaching would be recognized (obvious) to one skilled in the art! 35 U.S.C. 102(e) does not support such a posturing! What is unequivocally clear is that the Melman et al. reference does not teach let alone suggest an aqueous solution comprised of from 10 to 20 weight percent vinegar together with of from 5 to 10 weight percent sodium carbonate and 1 to 5 weight percent sodium chloride. Simple calculation of the percent by weight of acetic acid in such Example 8 of the Melman et al reference is less than one (1) percent! Additionally, the sodium carbonate and sodium chloride are present in a weigh percent less than and/or greater that acetic acid, distinguished from Applicant's novel contribution wherein vinegar is present in an amount greater than the combined weight of sodium carbonate and sodium chloride and wherein the sodium carbonate is present in an amount greater that sodium chloride, or as more specifically recited in the now pending claims of 10 to 20 weight percent vinegar, 5 to 10 weight percent sodium carbonate and 1 to 5 weight percent sodium chloride.

Notwithstanding such inadequate teachings or suggestions, the Examiner proffers the Melmen reference as the primary reference in combination with the secondary references to Vermeer, Zelaya and Pinol to obviate now pending Claims 1 and 4 and 5 under 35 U.S.C.103 where such primary reference fails to suggest let alone teach that vinegar should be present in an amount greater than the sodium carbonate and sodium chloride content. In the Office Action under reply, the Examiner acknowledges the inadequacies of the Melman reference regarding the vinegar content. With such acknowledgement, Applicant respectfully submits that the secondary references can add nothing to obviate Applicant's claim inventions, and that the selected picking and choosing of ingredients, not suggested in the primary reference is improper and not obviative thereof. Most significant, is the fact that none of the secondary references suggest let alone teach anything obviative to cure the basic inadequacies of the Melman reference to obviate Applicant's

claimed recitations wherein vinegar present in an amount of from 10 to 20 percent by weight and wherein there is also present an amount of from 5 to 10 percent by weight of sodium carbonate and from 1 to 5 percent by weight sodium chloride.

The Examiner did not cite portions of any of the secondary references that teach let alone suggest the presents of such additional components let alone in such recited amounts. As hereinabove noted, none of the teachings of the Melman reference disclosing an aqueous solution containing all such components were particularized by the Exminer, only Examples relating to Chewing Gum and Breath Freshner Tablets (Emphasis added). The Melman reference is devoid of any teaching let alone suggestion of such percent by weight combination of components as recited in Claims 1 and 4 and 5. The citing of certain components in the secondary references relative to the recitations of Claim 5 does not obviate the inadequacies of such secondary references to add anything to the Melman reference obviative of Claims 1 and 4! It is respectfully submitted that the combination of the Melman reference taken with the secondary references to Vermeer, Zelay and Pinol fail to obviate under 35 U.S.C. 103(e) Applicant's novel contribution as recited in now pending Claims 1 and 4 and 5 and withdrawal of such rejection is respectfully requested.

In view of the foregoing remarks and amendment to the claims, it is believed that this application is in condition for allowance and an early notice to such extent is respectfully requested.

Respectfully submitted,

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By: 9/21/05

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